IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7673 OF 2004

S.B. Parab .. Petitioner

Vs.

Godrej C.E. Ltd. .. Respondent

Mr. R. Nair with Devendranath Joshi for petitioner.

CORAM: **B.H. MARLAPALLE,J.**

DATED: **JUNE 9, 2005**

P.C.:

1. Heard Mr. Nair, the learned counsel for the petitioner.

2. The petitioner was appointed as Handyman in Grade-B by order dated 1/8/1977. After a long period of 19 years or so he approached the Labour Court at Thane by filing an application under Section 33C (2) of the Industrial Disputes Act, 1947 claiming that he was in fact working as a Refrigerator Mechanic carrying the higher payscale and, therefore, he was entitled for the difference in wages over and above the wages received by him for the post of Handyman Grade-B. This application came to be registered as Application (IDA) No.133 of 1996 and was dismissed by the learned Judge of the Third Labour Court at Thane on the ground that the claim made could not be entertained in an application filed under

Section 33C (2) of the Act.

3. There is no dispute that the payscale applicable to the post of Handyman Grade-B was lower than the payscale for the post of Refrigerator Mechanic and the employer in its response took the position that the petitioner was not employed as Refrigerator Mechanic. Thus the status of the petitioner was disputed and there was no documentary evidence with the petitioner to show that he was employed as Refrigerator Mechanic Grade-C. The appointment letter placed before the Labour Court was for the post of Handyman Grade-B. It was under these circumstances, the Labour Court took a view that the claim of the petitioner required adjudication in a reference to be made to the appropriate forum under the Industrial Disputes Act and till the petitioner's status was decided in such adjudication, his claim could not be entertained in an execution application filed under Section 33C (2) of the Act.

4. The learned Counsel for the petitioner has placed reliance on the decision of the Constitution Bench in the case of **The Central Bank of India Ltd. vs. P.S. Rajagopalan etc. reported in AIR 1964 SC 743** and another decision of this Court in the case of **Ramakrishna Ramnath vs. State of Maharashtra and ors.**

reported in 1975 Mh.L.J. 212. The Supreme Court in the case of Central Bank of India (Supra) noted that Section 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers and the said claim clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2) of Section 33C of the Act. The workman in Central Bank's case had claimed the benefit of the settlement which was in operation and, therefore, it was held that the Labour Court had the powers to examine whether the Applicant was covered by the said settlement, in an application filed under Section 33C (2) because it was an incidental enquiry. This decision does not bring within its sweep the enquiry that was required to be conducted in the instant case regarding the status of the petitioner. In the case of Ramakrishna Ramnath (Supra), the Division Bench of this Court held that in an application filed under Section 33C(2) of the I.D. Act the Labour Court can decide whether relationship of employer and employee

exists and whether person invoking jurisdiction is a "workman" as defined under the said Act. The inquiry in the instance case which the employer does not dispute the relationship and it was not contended that the petitioner was not a workman as defined under the Act. As noted earlier, the employer had taken a view that the petitioner was not employed as Refrigerator Mechanic as he was employed all along as Handyman Grade-B, his claim for payscale as applicable to the post of Refrigerator Mechanic could not be decided in an application filed under Section 33C(2) of the Act. Under these circumstances the view taken by the Labour Court cannot be termed as perverse or erroneous calling for an interference in a petition under Article 227 of the Constitution.

5. The petition is, therefore, rejected summarily.

(B.H. Marlapalle,J.)